IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: SEMGROUP ENERGY PARTNERS, L.P., SECURITIES LITIGATION)	Case No. 08MD-01989 GKF-FHM

DEFENDANTS' JOINT REQUEST FOR JUDICIAL NOTICE

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TO THE HONORABLE UNITED STATES DISTRICT COURT:

REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendants SemGroup Energy Partners, L.P., SemGroup Energy Partners G.P. L.L.C. (collectively, "SGLP"), Kevin L. Foxx, Alex G. Stallings, Michael J. Brochetti, Thomas L. Kivisto, Gregory C. Wallace, Brian F. Billings, and W. Anderson Bishop ("Defendants") respectfully request that the Court take judicial notice of each of the documents listed below, in connection with their Motions to Dismiss Harvest Fund's Corrected Consolidated Class Action Complaint for Violations of Federal Securities Laws (the "CAC" or "Complaint"). True and correct copies of these documents are included as Exhibits in a separately filed Appendix.

A. Documents Incorporated by Reference

The Supreme Court instructs that in ruling on a motion to dismiss a securities fraud complaint, a court must consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007); *see also Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009) (citing *Tellabs* and noting that "[i]n evaluating a Rule 12(b)(6) motion to dismiss, courts may consider not only the complaint itself but also attached exhibits, . . . documents incorporated into the complaint by reference [and] documents referred to in the complaint") (citations omitted).

The Complaint cites to and relies upon the following documents attached to the Appendix as exhibits: Docket Nos. 3701, 3704, 3708, 3709, 3710, and 3711 in Cause No. 08-11525, in the United States Bankruptcy Court for the District of Delaware, Final Report of Louis J. Freeh, (the "Examiner's Report") (App. Exhibit 1); Examiner's Report Exhibits 5 (App. Exhibit 1A), 6

(App. Exhibit 1B), 11 (App. Exhibit 1C), 19 (App. Exhibit 1D), 35 (App. Exhibit 1E), and 45 (App. Exhibit 1F); July 18, 2007 Form 424B4 Prospectus (App. Exhibit 2); June 29, 2007 Amendment No. 5 to Form S-1/A (App. Exhibit 2A); August 16, 2007 Form 10-Q for quarter ending June 30, 2007 (App. Exhibit 3); November 14, 2007 Form 10-Q for quarter ending September 30, 2007 (App. Exhibit 4); February 14, 2008 Form 424B4 Prospectus (App. Exhibit 5); February 12, 2008 Amendment No. 1 to Form S-1 (App. Exhibit 5A); March 6, 2008 Form 10-K for year ended December 31, 2007 (App. Exhibit 6); May 8, 2008 Form 10-Q for quarter ending March 31, 2008 (App. Exhibit 7); May 12, 2008 Form 8-K (App. Exhibit 23); May 20, 2008 Form 8-K (App. Exhibit 24); May 22, 2008 MLP Conference presentation (App. Exhibit 8); and March 23, 2009 Form 10-Q for the quarter ending June 30, 2008 (App. Exhibit 9). Because these documents are referenced in and relied upon by the Complaint, they are the proper subject of judicial notice under the incorporation by reference doctrine.

B. Documents Whose Accuracy Cannot Reasonably Be Questioned

Rule 201(b) of the Federal Rules of Evidence provides that a court shall take judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." SEC filings are proper subjects for judicial notice under this standard. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008). SGLP's 2008 10-K (App. Exhibit 10); Thomas Kivisto's Form 4s (App. Exhibits 11A, 11B, and 11C); Gregory Wallace's Form 4s (App. Exhibits 12A, 12B, and 12C); Kevin Foxx's Form 4s (App. Exhibits 13A, 13B, and 13C); Michael Brochetti's Form 4s (App. Exhibits 14A and 14B); Alex Stallings's Form 4s (App. Exhibits 15A and 15B); W. Anderson Bishop's Form 4s (App. Exhibits 16A, 16B, and 16C); and Brian Billings's Form 4s (App. Exhibits 17A, 17B, 17C, and 17D) are therefore properly subject to judicial notice.

The Court may also take judicial notice of analysts reports covering SGLP during the class period, including the September 12, 2007 Wachovia Capital Markets Report (App. Exhibit 18). *See In re Infonet Servs. Corp. Sec. Litig.*, 310 F. Supp. 2d 1106, 1115 n.10 (C.D. Cal. 2003) (taking judicial notice of analyst reports to show "whether and when certain information was provided to the market"). Likewise, the Court may take judicial notice of stock indexes and other information available on the internet. *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (noting that "[i]t is not uncommon for courts to take judicial notice of factual information found on the world wide web" and listing items such as a term defined on the NASD website and stock prices). The Department of Energy WTI Spot Price Charts and Graphs (App. Exhibits 19 and 26); the Alerian MLP Index (App. Exhibit 20); the NASD's definition of "back-to-back options" (App. Exhibit 21); and SGLP's unit price (App. Exhibit 25) are therefore properly subject to judicial notice.

Finally, judicial records from other proceedings are a proper subject of judicial notice. *Davis v. Bacon*, 234 F. App'x 872, 874 (10th Cir. 2007). The Report and Recommendation filed in Cause Nos. 99-CV-825, -828, -829, -862, -863, -864, -873, -874, -889, -919, -943, -847, *In re CFS-Related Sec. Fraud Litig.* (N.D. Okla. Dec. 21, 2001) (App. Exhibit 22) is therefore properly subject to judicial notice.

For the foregoing reasons, Defendants respectfully request that the Court take judicial notice of the above-referenced Exhibits.

Respectfully submitted this the 22nd day of July, 2009.

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CERTIFICATE OF SERVICE

I hereby certify on July 22nd, 2009, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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